2. A railway company, in regulating the speed of its trains, must consider the dryness of the season, the strength and direction of the wind, the danger to adjacent property, and the surrounding circumstances which increase the danger from fire thrown out by the engines; and a high rate of speed, when taken in connection with the circumstances, may be negligence.

3. Where, in an action against a railway company for the destruction of property by fire set by sparks from an engine, it was shown that a freight train too heavily loaded for one engine was drawn by two engines at double the speed of the schedule time and up a grade, that the engines emitted an unusual quantity of sparks, that the property destroyed was exposed to danger by reason of its nearness to the track, the dryness of the season, and the strong wind blowing directly to it from the passing engines, and it was not shown that the speed adopted, in view of the prevailing conditions, was a necessity to the railway service or a duty owed by the company to its patrons or the public, the question whether the company was guilty of actionable negligence was for the jury.

STEVENSON v. LEVINSON.

March 9, 1905.

[49 S. E. 974.]

APPEAL AND ERROR—RECORD—NEW TRIAL.

It cannot be held that the court erred in granting a new trial, a ground of the motion therefor being misdirection of the jury, and the instructions not being in the record.

INTERSTATE COAL AND IRON CO. v. COMMONWEALTH.

March 9, 1905.

[49 S. E. 974.]

TAXATION—MINERAL LANDS—ASSESSMENT AS UNDER IMPROVEMENT.

Under Laws 1902-04, p. 320, c. 217, providing for the assessment every two years of mineral lands at their fair cash value: First, of such portion of each tract which is improved and under development; second, of the improvements, fixtures, and machinery on each tract; and, third, the area and fair cash value of such portion of each tract as shall not be under development—the portion of a tract underlaid with coal is to be assessed as under improvement, where coal mines have been opened on it, and not such portion merely as will be deprived of coal within the next two years.

CHADDUCK v. BURKE.

March 9, 1905.

[49 S. E. 976.]

PUBLIC OFFICERS—APPOINTMENT—POWER OF COURTS—STATUTORY PROVISIONS—VACANCIES—HOLDING OVER AFTER EXPIRATION OF TERM.

1. A court has no inherent power to appoint to office, and a statute conferring the power must be strictly pursued.